

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE; and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

Civil Action No. 1:20-cv-11283-ADB

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in his
official capacity as Acting Secretary of the
United States Department of Homeland
Security; and MATTHEW ALBENCE, in his
official capacity as Acting Director of U.S.
Immigration and Customs Enforcement,

Defendants.

DECLARATION OF IAN A. WAITZ

I, Ian A. Waitz, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, based on my personal knowledge as well as information compiled and verified by other Massachusetts Institute of Technology (“MIT” or the “Institute”) employees, and that I could testify to these matters if called to do so:

1. I am the Vice Chancellor of MIT, a position I have held since 2017. The matters addressed herein are based on my personal knowledge or upon information I learned in the course of my duties at MIT, including from others involved in MIT’s COVID-19 operational plans and efforts to support international students.

2. I have been a member of MIT's faculty since 1991. In addition to serving as Vice Chancellor, I am currently the Jerome C. Hunsaker Professor of Aeronautics and Astronautics and a MacVicar Faculty Fellow. I previously served as the department head of Aeronautics and Astronautics and Dean of the School of Engineering.

3. In my role as Vice Chancellor, I lead the Offices of Undergraduate and Graduate Education. I also oversee the first-year undergraduate educational experience and MIT's residential education system. My office is the primary educational point of contact for MIT's undergraduate and graduate student government and other key student organizations. Additionally, MIT's International Students Office ("ISO"), which assists international students in maintaining their legal status and promotes their interaction with and integration into the MIT community, reports to my office. I report to Chancellor Cynthia Barnhart.

4. In my role as Vice Chancellor, I have worked collaboratively for the last several months with President L. Rafael Reif, Chancellor Barnhart, MIT's leadership, faculty, staff, scholars, students, alumni, parents, and outside advisors in developing and implementing MIT's short- and long-term plans and operations for the COVID-19 pandemic, including our plans for undergraduate and graduate education this fall.

5. In March 2020, President Reif asked me to co-lead MIT's Team 2020 with Interim Deputy Executive Vice President Anthony Sharon. President Reif tasked Team 2020 with examining, analyzing, and refining options for the upcoming academic year for MIT, including investigating the steps that MIT should take to reasonably manage the health and safety risks in reopening and scaling back operations under various scenarios. In making these recommendations for the upcoming year, we took into consideration the potential long-term consequences of such recommendations for MIT.

6. In March, I began holding daily briefing calls with MIT deans, department heads, faculty members, senior administrative staff, and students about creating academic continuity in light of COVID-19 and the necessity of reducing on-campus operations. In these briefing calls, we discuss current issues, announce new decisions, and solicit input on the Institute's response to COVID-19.

7. I also met regularly with President Reif's senior leadership team to convey information from the planning group and to obtain high-level decision making as we moved along in our planning.

8. Members of Team 2020 sought and received feedback about MIT's options for the Fall 2020 semester and beyond. Our decision-making process was informed by experts across many fields, collaborations with leaders at schools, departments, and groups across the Institute, and feedback from our students and other community members, including through virtual town hall meetings with and surveys of students, faculty, and staff about remote learning experiences, housing needs, and preferences for the fall semester.

9. We also reviewed presentations, survey results, reports, and recommendations from MIT community members, including feedback from academic departments regarding teaching methods; recommendations from MIT's undergraduate student government concerning the academic calendar, housing, and grading; input from faculty members who live in residence halls; and a report from key leaders of faculty governance committees that relate to undergraduate and graduate education.

10. We evaluated various options for the Fall 2020 semester with several key principles and values in mind. These principles and values included prioritizing our community's health and welfare, remaining focused on accomplishing MIT's mission to a high standard of excellence, and retaining flexibility in an uncertain and rapidly changing environment. Based on the events of

March 2020 and the breadth of our experience in higher education, we also recognized an important asymmetry in the challenges associated with adjusting to changing conditions: It will be far easier and less disruptive to gradually shift from a primarily remote-learning program to greater in-person activities as health conditions permit than it would be to repeat the experience from the Spring of having to rapidly de-populate campus and move in-person coursework online. In other words, the entire MIT community—students, faculty, and staff—are better served from a health and pedagogical standpoint by safely and cautiously returning to campus than by ramping up operations too quickly and being forced to shut down again.

11. We also evaluated the options for the 2020-2021 academic year in the context of possible future paths of COVID-19, such as a second wave of COVID-19 in the Boston and Cambridge area, infection and side effects becoming more severe with the onset of the winter flu season, and the possible future widespread availability of rapid testing, effective therapeutics, or an effective vaccine for COVID-19.

12. After close to four months of dedicated work, Team 2020 published our final report on June 12, 2020 (“Team 2020 Report”). The Team 2020 Report evaluated five options for the upcoming academic year: (1) inviting all undergraduate students back in the fall for in-person teaching; (2) a delayed start of January 2021, with two full semesters beginning in early January and stretching into the summer; (3) inviting 60% of undergraduate students back to campus in the fall and 75% in the spring; (4) a three-semester model in which undergraduate students were guaranteed two out of three semesters on campus; and (5) a fully remote fall semester, with the degree of in-person teaching for spring to be determined later based on conditions closer to that time.

13. We carefully weighed the benefits and drawbacks of each option, including the health risks to the MIT and the broader community; quality of educational offerings; effect on student academic progression; impact on student quality of life; impact on residential operations; feasibility

of implementation; financial sustainability; reputation impacts; and long-term effect on the Cambridge and Boston community.

14. After considering the options above, and weighing the latest public health data, which in late June and early July began showing a dramatic increase in cases nationally and around the world, MIT adopted a model of two semesters with gradually increased on-campus occupancy, with only 40% of undergraduate students returning to campus in the fall. We chose a level of density on campus, and in particular in our residence halls, that we believe will best enable us to prioritize the health of our community. We invited all graduate students to return because the apartment-style living arrangements typical of our graduate students present lower health risks than the dormitory-style arrangements typical of our undergraduate population. Further, only 40% of graduate students are typically housed in MIT facilities, with the others living in the surrounding area. Our hope is that success in the fall with this number of students will enable us to learn and invite back additional students in the spring. Course instruction for students living off-campus will take place entirely remotely, with no access to campus, and students living on campus will have a combination of online and in-person instruction.

15. MIT reached this decision based on its understanding of the safety and public risks and its pedagogical judgments. For example:

a. MIT invited rising undergraduate seniors to return to campus because they have more classes that rely on physical infrastructure (e.g., labs) and less flexibility to reconfigure their schedules and still complete their required course work before they graduate.

b. MIT also considered the need to reduce campus density and provide students with adequate space to prevent campus housing from becoming a COVID-19 hotspot. We determined that single-occupancy rooms for undergraduate students, apartment-style accommodations for graduate students, limiting the number of people sharing bathrooms and

cooking facilities, and creating sufficient quarantine space would all be required. After accounting for these housing constraints and others, MIT determined that it could only accommodate approximately 2,000 undergraduate students and 2,100 graduate students in campus housing.

c. We learned from our experience in March that shutting down a campus and transitioning from in-person to remote learning is much more difficult than instituting remote learning at the outset and shifting to a greater amount of on-campus, in-person learning as health conditions allow. Consequently, we chose a measured reopening process to minimize the risk of needing to shut down the campus again.

d. Finally, we wanted to be a good citizen of the Cambridge and greater Boston area, and take steps to help prioritize the safety of the community around us. It is incredibly important that we take steps to avoid being the cause of a new COVID-19 outbreak in Massachusetts.

16. Our decision to institute remote learning for most of our students differs from the decisions of some of our peer schools. It is key, however, that MIT is able to decide how best to reopen our campus based on our evaluation of the public health, safety, and pedagogical needs of our particular campus community. That is what MIT has spent months planning for.

17. MIT intentionally waited as long as we could to make a decision about the fall 2020 semester so we could make the decision based on the current expert, safety, and health data and needs of our students. We decided early on to make final decisions as late as was reasonable for our students and administration, given the rapidly evolving information on COVID-19 and its spread, safety and health guidance from public officials, and feedback from our community.

18. As Chancellor Barnhart described in her July 8, 2020 declaration, it will be extremely challenging if MIT is required to change course at this late date. Many of the key deadlines that affect the fall semester are fast approaching:

- a. The deadline for departments to submit their class schedules is July 14;
- b. The listing of classes becomes available to students on July 17, and the beginning of student preregistration is July 20;
- c. The deadline to apply for housing assistance is July 21;
- d. The deadline for revised financial aid letters, which depend on whether the student will be on- or off-campus, is July 22;
- e. The deadline for undergraduate students who have been invited back to campus to apply for on-campus housing is July 27;
- f. The deadline to defer admission for first-year students is July 27; and
- g. The deadline to decline campus housing is August 5.

19. Given the academic, housing, and other planning that has gone into preparing for the fall semester, and the short time between now and the beginning of the semester, it would be very difficult at this stage to amend course planning and create a new approach for offering housing to additional students in a manner that is true to our goal of prioritizing health and safety.

20. As part of my work evaluating the options and making recommendations for the fall semester, members of Team 2020 and I reviewed and/or were briefed on the COVID-19 Guidance for Student and Exchange Visitor Program that the United States Immigration and Customs Enforcement (“ICE”) issued in response to the COVID-19 pandemic. On March 13, 2020, ICE issued COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders (“March 13 Guidance”). Pursuant to the March 13 Guidance, students in the United States holding F-1 visas are allowed to “count online classes towards a full course of study” in the event their school temporarily

stopped in-person classes, regardless of whether the visa holders remained in the United States or departed the United States. The March 13 Guidance stated that it would remain “in effect for the duration of the emergency.”

21. Team 2020 relied on the March 13 guidance in making recommendations and decisions for the fall semester. In particular, we understood that international students would be allowed to continue to learn remotely, either from on-campus housing or housing elsewhere in the United States, for the duration of the COVID-19 emergency, which remains ongoing.

22. The ability of international students to participate in the fall 2020 semester is crucial. All students, faculty, staff, benefit from learning and working with students with diverse backgrounds and experiences, including international students. Many of our academic programs involve hands-on, collaborative work that is similarly strengthened by diversity of backgrounds and viewpoints. The programs that will be conducted remotely will similarly benefit from the perspectives of international students.

23. On July 6, 2020, United States Immigration and Customs Enforcement issued the COVID-19 and Fall 2020 directive (“July 6 Directive”), largely withdrawing the flexibility of the March 13 Guidance. In the week since the July 6 Directive was announced, MIT’s administration, students, and faculty have been working around the clock to assess the consequences of the July 6 Directive and support our international students.

24. The July 6 Directive will impact a significant number of MIT students. Approximately 3,500 MIT students study in the United States on F-1 visas, many of whom are still in the United States. Because of, among other things, the limits on the number of students who can safely live on campus and study in-person this year, the July 6 Directive will require many of MIT’s international students to leave the United States. Those students will face many challenges if required to leave the United States in order to continue their studies:

a. Many students will be forced to return to dire conditions. More than 1,000 of MIT's F-1 students are from countries subject to a State Department "Do Not Travel" advisory, and hundreds of others are from countries over which the State Department has issued an "Exercise Increased Caution" advisory. More than 100 of MIT's F-1 students are from countries suffering from ongoing humanitarian crises.

b. As a practical matter, many students will not be able to fully participate in online classes and research from their home country. As we have learned this spring, many of our students live in locations with unreliable or no internet service. Nearly 1,000 of MIT's F-1 students are from countries with blocked or limited Internet access such as Ethiopia, China, and Syria. Approximately 3,000 of MIT's F-1 students are from countries with a time difference of six hours or more from Cambridge.

c. More than 700 F-1 students are from countries currently suffering from significant COVID-19 outbreaks such as Brazil, India, and Russia. And many students may need to take multiple flights to reach their home country, thereby potentially increasing the risk of them catching and spreading COVID-19.

d. Many students may not be able to return to campus when we return to a fully in-person program. More than 1,500 of MIT's F-1 students hail from countries subject to a COVID-19-related or other ban on travel into the United States.

25. The July 6 Directive also poses many major challenges for MIT to operate, including:

a. After spending four months engaged in a collaborative, iterative process that balanced public health and safety considerations against MIT's mission and the needs and desires of our community, we will effectively be forced to devise a new plan that complies with the July 6 Directive to ensure that our international students are able to continue with their studies. Given the short time frame, we will certainly not be able to replicate the

extensive community outreach and research that we conducted to create our original plan. Instead, we will have to quickly create a different plan that still allows MIT to provide its high-quality education and preserve the health of its students, faculty, and staff and the Cambridge and greater Boston areas. As each day passes, the difficulty of devising a new plan that achieves these goals increases significantly.

b. We have already determined from a public health and safety standpoint that we should not have more than 40% of undergraduate students living on campus. To accommodate international students under the July 6 Directive, we would be forced to reevaluate which students may apply for on-campus housing and how to accommodate needs across the institution, despite the fact that on-campus housing preparations are well under way.

26. We have also been working over the past week to support our international students, many of whom are scared and confused by the July 6 Directive. Since the announcement of the July 6 Directive, ISO has fielded hundreds of calls and emails from students who are concerned about their visa status; scared of returning to their home countries; and worried that they will be unable to participate fully in their classes, will suffer financial loss from the policy change, or will be faced with deferring or foregoing their academic programs. Administrators, faculty, and staff have also received hundreds of emails from students expressing their significant concerns.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day, July 13, 2020

/s/ Ian A. Waitz
Ian A. Waitz